IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

Cr.MMO No.108 of 2006

Date of Decision: 15th November, 2006

M/s Ashoka Alloys Limited	**Petitioner**
Versus	
M/s Arun Steels and others	**Respondents**

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

For the petitioner: **Mr.Ankush D. Sood, Advocate.**

For the respondents: **None.**

V.K.Gupta, C.J. (Oral)

In this petition filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner seeks to challenge the order dated 11th July, 2006 passed by the learned Addl. Sessions Judge, Sirmaur District at Nahan, in Cri. Revision No.4-N/10 of 2002. Vide the aforesaid order, the learned Addl. Sessions Judge while dismissing the aforesaid Criminal revision filed by the petitioner upheld the order dated 12th February, 2002 passed by the learned Addl. Chief Judicial Magistrate, Paonta Sahib. Vide the aforesaid order dated 12th February, 2002 the learned trial Magistrate had allowed an application filed by respondents No.2,3,5 and 6 herein under Section

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

245(2) of the Code of Criminal Procedure. As a sequel to the passing of the aforesaid order by the learned trial Magistrate the aforesaid four respondents stood discharged of the offences for which they had originally been summoned by the learned trial Magistrate.

A criminal Complaint was filed by the petitioners herein under Sections 409, 467 and 471 read with section 34 of the Indian Penal Code against as many as six accused. M/s Arun Steels through its partner Munni Lal Gupta was shown as accused No.1 in the said complaint. Munni Lal Gupta, Raj Kumar Gupta, Kishan Gupta, Sanjay Gupta and Viresh Gupta were impleaded as accused No. 2,3,4,5 and 6, respectively in the said complaint. All these five persons were impleaded styling them as partners of "M/s Arun Steels". Since a lot has been said about the styling as well as description of "M/s Arun Steels" as well as the aforementioned five respondents, it shall be advantageous if the description of the aforesaid six accused as finds a mention in the cause-title of the complaint is reproduced herein verbatim. It reads thus:-

> "1. M/s Arun Steels through its Partner Shri Munni Lal Gupta, A/50/1, Wazirpur, Industrial Area, New-Delhi-110062.
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> 2. Munni Lal Gupta, Partner, M/s Arun Steels, A/50/1, Wazirpur Industrial Area, New Delhi – 110052.

3. Raj Kumar Gupta, Partner, M/s Arun Steels, A/50/1, Wazirpur Industrial Area, New Delhi – 110052
4. Kishan Gupta, Partner, M/s Arun Steels, A/50/1, Wazirpur Industrial Area, New Delhi – 110052
5. Sanjay Gupta, Partner, M/s Arun Steels, A/50/1, Wazirpur Industrial Area, New Delhi – 110052
6. Viresh Gupta, Partner, M/s Arun Steels, A/50/1, Wazirpur Industrial Area, New Delhi – 110052"

In para 4 of the complaint, the complainant averred that accused No.1 is a partnership firm and accused No. 2 to 6 are partners of the said partnership firm. Para 4 of the complaint for ready reference reads thus:-

> "4. That accused number 1 is a partnership firm. All the accused number 2 to 6 are partners of the said partnership firm and are equally and fully responsible for the acts, affairs, Clearing liabilities etc. of the partnership firm."

In para 12 of the complaint, the following allegation is levelled against accused persons. Para 12 reads thus:-

> "12. That the accused persons in connivance with each other sold the material against the directions/wishes of the complainant. After selling the material the accused persons being agent of the complainant were supposed

to send the payment within 5 days of the receipt of the payment/sale of the material."

The above named four accused persons approached the learned trial Magistrate with a prayer for discharging them on the simple ground that neither "M/s Arun Steels" is a partnership firm nor they are the partners of the said firm. The pith and substance of their prayer in the application filed by them was that they have nothing to do with M/s Arun Steels, which according to them is a sole proprietorship concern owned by one Arun Kumar Gupta, who as per the averments made in the aforesaid application (filed under Section 245(2) of the Criminal Procedure Code) had not even been named as accused in the complaint (at this stage, Mr.Ankush Dass Sood, learned counsel appearing for the petitioner submits that respondent No.4 Kishan Gupta was mistakenly described. Actually it should have been Arun Kumar Gupta, which is an alias of Kishan Gupta and this fact was brought to the notice of learned trial Court in due course of proceedings).

The learned trial Magistrate agreeing with the aforesaid contention of respondents No.2, 3, 5 and 6 allowed their aforesaid application and discharged them. Feeling aggrieved of the aforesaid order dated 12th February, 2002 passed by the learned

trial Magistrate discharging the aforesaid four respondents, the petitioner preferred a Criminal Revision petition before the learned Addl. Sessions Judge who, as noticed at the outset, dismissed the same vide impugned order dated 11th July, 2006.

Mr.Ankush Dass Sood, learned counsel appearing for the petitioner very vehemently argued that both the orders passed by the learned Courts below are erroneous and that the petitioner ought to have been given a chance and afforded opportunity during the trial to prove that the aforesaid four respondents were guilty of the offence for which they had been summoned. Mr. Sood took me through various documents annexed with the petition.

I am totally convinced and fully satisfied that both the Courts below did not err at all in passing the orders in favour of the aforesaid four respondents. As noticed, the basic edifice as well as the basic premise upon which the complaint was instituted by the complainant related to the fact that M/s Arun Steels was a partnership firm. From it emanated the second fact of the aforesaid four persons, in addition to aforesaid Kishan Gupta, being the partners of the aforesaid firm. It was linked with the aforesaid basic edifice and the basic premise that the complainant impleaded the aforesaid four persons as accused and the learned trial

Magistrate also summoned them. Nothing else was attributed to the aforesaid four persons at all. If the aforesaid four persons were not partners of M/s Arun Steels and if M/s Arun Steels itself was not a partnership firm and was a sole partnership concern there was no justification in law to continue with the proceedings in the aforesaid criminal complaint against the aforesaid four respondents.

Coming to Mr.Sood's plea of the complainant being not afforded an opportunity of adducing evidence at the trial, I persistently asked Mr.Sood to show me an iota of evidence or any piece of material, which even remotely might suggest that M/s Arun Steels is a partnership firm or that the aforesaid four persons are/were its partners. He failed to do so. Actually when Mr.Sood took me through the copy of the application filed by the petitioner in the trial Court under Section 311, Criminal Procedure Code, for summoning additional witnesses, I noticed that through the medium of this application also the petitioner does not intend or propose to lead any evidence to prove the fact that M/s Arun Steels is a partnership firm or that the aforesaid four respondents are the partners of the said firm. What, therefore, clearly emerges is that neither the two Courts below nor this Court have any doubt about M/s Arun Steels being a sole partnership

concern. That being the case, continuing the trial against such persons who admittedly are not the partners of M/s Arun Steels would have resulted in a continuing mis-carriage of justice.

Mr.Sood cited the following four judgments and wanted me to refer them in the course of this order:-

1. A.K.Khosla and others vs. T.S.Venkatesan and others, reported in 1992 Cri. L.J. 1448;
2. Satish Jayantilal Shah vs. Pankaj Mashruwala and another, reported in 1996 Cri.L.J.3099;
3. Jaikrishnadas Manohardas Desai and another vs. State of Bombay, reported in AIR 1960 SC 889; and
4. Kedar Nath vs. State, AIR 1965 All.233.

I am afraid that these four judgments would be of any help to the petitioner at all in the present case because the issue involved herein is so distinct that the aforesaid four judgments or the ratio therein are not at all applicable to this case on any count.

For the foregoing reasons, the petition is dismissed in limine.

Cr.MPs No.484, 485 of 2006

In view of the dismissal of the main petition, both the applications are also dismissed.

15th November, 2006 (V.K.Gupta), C.J.
(C)